

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 9th January, 2012

+

LPA 764/2011

ANKUR MUTREJA

..... Appellant

Through: Appellant in person.

Versus

DELHI UNIVERSITY

..... Respondent

Through: Ms. Maninder Acharya, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGEMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The appellant had sought certain information under the provisions of the Right to Information Act, 2005 from the Information Officer of the respondent University; being not satisfied with the reply received, the appellant filed the first appeal and ultimately the second appeal to the Central Information Commission (CIC). The CIC vide its order dated 15.01.2011 directed the Information Officer of the respondent University to provide the required information to the appellant and also issued notice to the Information Officer of the respondent University to show cause as to

why penalty be not imposed on him for providing false information ostensibly with *mala fide* intention. The appeal filed by the appellant was however disposed of.

2. The information directed has since been supplied to the appellant and the appellant has no grievance in that regard. The appellant however filed the writ petition, from dismissal whereof this appeal has arisen, averring that the CIC ought not to have disposed of the appeal vide order dated 15.01.2011 since notice to show cause as aforesaid had been issued to the Information Officer of the respondent University. It was / is the contention of the appellant that owing to the appeal having been disposed of, the appellant had no opportunity to be heard on the issue of imposition of penalty on the Information Officer of the respondent University. The appellant, in the writ petition, sought the relief of quashing of the order dated 15.01.2011 of the CIC in so far as disposing of the appeal and sought a direction to CIC to grant an opportunity to the appellant to file a rejoinder to the reply filed by the respondent University to the show cause notice aforesaid and to hear the appellant on the issue of imposition of penalty.

3. The learned Single Judge dismissed the writ petition holding that imposition of penalty under Section 20 of the RTI Act is a matter of

discretion of the CIC and there was nothing to indicate that the penalty if ultimately imposed would have become payable to the appellant, as contended by the appellant.

4. Notice of this appeal was issued. We have heard the appellant appearing in person and the counsel for the respondent. We have also perused written arguments filed by the appellant.

5. It is the contention of the appellant, that a combined reading of Section 19(8)(c) and Section 20 of the Act makes it abundantly clear that the proceedings under Section 20 of the Act are part of the appellate proceedings; that the complainant on whose instance notice to show cause against imposition of penalty is issued has a role as a prosecutor in the penalty proceedings and penalty proceedings cannot be held in his absence - reliance in this regard is placed on ***Ram Chander Vs. State of Haryana*** AIR 1981 SC 1036; that CIC at different times has been following different procedure - in some matters the appeal is not disposed of till the conclusion of the penalty proceedings, thereby giving opportunity to the complainant to participate in the penalty proceedings. He thus contends that the procedure for the penalty proceedings needs to be laid down.

6. We have at the outset enquired from the appellant the fate of the notice to show cause issued to the Information Officer of the respondent University. The appellant states that since he had no opportunity to participate, he does not know the outcome thereof. The counsel for the respondent University states that the CIC was satisfied with the explanation furnished by the respondent University and thus dropped the show cause notice.

7. Section 19(8)(c) and Section 20 of the RTI Act are as under:

“19. Appeal.

(1).....

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to, -

(a).....

(b).....

(c) impose any of the penalties provided under this Act.”

“20. Penalties. – (1)Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall

recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

8. It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has “without any reasonable cause” refused to receive the application for information or not furnished information within the prescribed time or *malafidely* denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed “at the time of deciding the appeal”. The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal “in accordance with such procedure as may be prescribed”. The said procedure is prescribed in Section 20 of the Act, which requires the CIC to,

at the time of deciding the appeal only form an opinion and not to impose the penalty.

9. The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and *malafide*.

10. While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also thereagainst if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission (Management) Regulations, 2007 though provides

for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.

11. The penalty proceedings are akin to contempt proceedings, the settled position with respect thereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance. Reference in this regard may be made to *Om Prakash Jaiswal v. D.K. Mittal* (2000) 3 SCC 171, *Muthu Karuppan, Commr. of Police, Chennai v. Parithi Ilamvazhuthi* (2011) 5 SCC 496 and Division Bench judgment of this Court in *Madan Mohan Sethi v. Nirmal Sham Kumari* MANU/DE/0423/2011. The said principle applies equally to proceedings under Order XXXIX, Rule 2A of the Civil Procedure Code, 1908 which proceedings are also penal in nature.

12. Notice may also be taken of Section 18 of the RTI Act which provides for the CIC to receive and inquire into complaints against the Information Officer. The legislature having made a special provision for addressing the complaints of aggrieved information seekers is indicative of the remedy of such aggrieved information seekers being not in the penalty proceedings under Section 20.

13. We therefore do not find any error in the procedure adopted by the CIC. Moreover, the appellant did not approach the CIC in this regard and preferred to file this petition directly.

14. We therefore do not find any merit in this appeal and the same is accordingly dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 09, 2012

‘gsr’..